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Paper No. 23

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APR 0 2 2003

OFFICE OF PETITIONS

In re Application of :
Rodriguez :
Application No. 9/978,215 : CORRECTED DECISION
Filed: October 15, 2001 : ON PETITION
For: Self Sealing Letter Sheets: :

This is a corrected decision on the paper filed January 9, 2003 styled as a "petition to the Commissioner" which *inter alia*, requests under 37 CFR 1.183 "any suspension of the rules related to any eventual untimeliness of the petition" which is being treated as a petition under 37 CFR 1.183 to waive 37 CFR 1.181(f) which requires that a petition be filed within two months of the action or notice from which relief is requested..

The petition is **dismissed.**

The decision of March 5, 2003 is vacated, as inspection of USPTO financial records reveals that the necessary petition fee was received.

Petition seeks waiver of the two month time limit set forth in 37 CFR 1.181(f) for initiating, on petition, review of subject matter that is not also subject to appeal. Petitioner gives as the reason for the request that he had to reply to Office communications in four other applications that were all mailed within a relatively short time period.

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case.

As to petitioner's related applications mentioned in the petition, inspection of USPTO records reveals: in 09/978,240 a non final rejection was mailed June 18, 2002, an interview was held on or about September 11, 2002, and applicant's reply was received September 17, 2002; in 09/978,264, a final rejection was mailed October 23, 2002, an interview was conducted on or about October 29, 2002, applicants reply was filed November 12, 2002; in 09/812,664 a final rejection was mailed October 16, 2002, applicant's reply was filed

November 4, 2002, and in this application a final rejection was mailed September 11, 2002, and applicant's reply was filed October 17, 2002.

Thus in 2 of the four applications involved, applicant had already filed his replies before he even had received the other two office actions and in the other two cases has filed replies within at most 5 weeks of the Office actions, even though each office action accorded applicant three months within which to reply and of course applicant could have extended each period under 37 CFR 1.136(a) to the maximum six month period.

Further, whether applicant chose to immediately see to any petitionable matter(s) in this or any other application within the non extendable period of two months set by 37 CFR 1.181(f) from the action or inaction complained of, as opposed to promptly preparing a reply to the merits of any rejection, for which petitioner had an extendable period of at least three months and up to six months, was a circumstance entirely within his control. That is, having made his tactical decision(s) as to how best to allocate his time to proceed in this or any other application, petitioner cannot now be heard to complain.

While petitioner may now wish to belatedly address petitionable matters herein, 37 CFR 1.183 should not be considered a panacea for applicant's tactical errors in prosecution. See, Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers); Hahn v. Wong, 892 F.2d. 1028, 13 USPQ2d 1313 of (Fed. Cir. 1993)(ignorance of the provisions of the rules or the substantive requirements of law is not a basis for extraordinary relief to consider an additional submission); Huston v. Ladner, 973 F. 2d. 1564, 1567-68, 23 USPQ2d 1910, 1913-14, 1917(Fed. Cir. 1992)(USPTO did not abuse its discretion in refusing to consider a belated submission of additional evidence); Vincent v. Mossinghoff, 230 USPQ 621, 625 (D.D.C. 1985)(petitioner's failure to heed notice and the rules of practice will not be permitted to shift, in equity his lack of diligence onto the USPTO). Furthermore, equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable, due care and diligence. U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983).

The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequence of his delay. See, Ex Parte Sassin, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and compare Ziegler v. Baxter v. Natta, 159 USPQ 378, 379 (Comm'r Pat. 1968) and Williams v. The Five Platters, Inc., 510 F.2d 963, 184 USPQ 744 (CCPA 1975).

This application is being forwarded to Technology Center AU 3727 to further consider the petitions filed January 9, 2003, and October 17, 2002.

Telephone inquiries relevant to this decision should be directed to the undersigned at (703) 305-1820.

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